112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358

TTY/TDD (VT): 800-253-0191
FAX: 802-828-3351
E-mail: psb.clerk@state.vt.us
Internet: http://www.state.vt.us/psb

State of Vermont

Public Service Board

September 30, 2011

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW – A306
Washington, DC 20554

Karen Majcher
Vice President, High Cost & Low Income Division
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

RE: Certification of Support for Rural and Non-Rural High–Cost Carriers Pursuant to 47 C.F.R Sections 54.313-314, CC **Docket Nos. 96-45 and 00-256**

Rate Comparability Review Pursuant to 47 C.F.R. Section 54.316

Dear Secretary Dortch and Administrator Majcher:

In accordance with the Federal Communication Commission's rules, the Vermont Public Service Board (the "Board") submits its annual Federal Universal Service Fund certification and Rate Comparability review.

I. Federal Universal Service Fund Certification

In accordance with 47 CFR §§ 54.313 and 54.314, I certify that all federal high-cost funds flowing to the following eleven companies operating in Vermont will be used in 2012 in a manner consistent with 47 U.S.C. § 254(e) for the provision, maintenance, and upgrading of facilities and services for which support is intended.

In Vermont, there are three types of telecommunication carriers:

Nonrural

1. Telephone Operating Company of Vermont LLC d/b/a/ FairPoint Communications ("FairPoint") (SAC 145115).[1]

Rural

2. Franklin Telephone Company (SAC 140053).
3. Ludlow Telephone Company (SAC 140058).
4. Northfield Telephone Company (SAC 140061).
5. Perkinsville Telephone Company (SAC 140062).
6. Shoreham Telephone Company, Inc. (SAC 140064).
7. Topsham Telephone Company, Inc. (SAC 140068).
8. Waitsfield-Fayston Telephone Co., Inc., d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom (SAC 140069).
9. FairPoint Vermont, Inc., d/b/a Northland Telephone Company of Vermont, d/b/a Fairpoint New England (SAC 143331).
10. Vermont Telephone Company, Inc., d/b/a VTel (SAC 147332).

Competitive

1. National Mobile Communications Corporation (SAC 149004).

FairPoint is the only nonrural incumbent eligible telecommunications carrier in Vermont. Federal support to FairPoint will be used in two ways:

1. The sum of $1,345,940 per year (equal to support received in 1999) has been incorporated into the calculation of the company's overall rates. This base amount will continue to support lower rates for basic service in the coming year.

2. The remaining federal support will be distributed through an explicit credit for residential and business customers. Pursuant to a 1999 agreement reached between Verizon-Vermont (now FairPoint)[2] and the Vermont Department of Public Service, each FairPoint

[1] On February 15, 2008, the Board approved a joint petition by Verizon-Vermont and FairPoint to sell substantially all of Verizon-Vermont's landline assets to FairPoint. *See* Docket 7270, *Joint Petition of Verizon New England, Inc. d/b/a Verizon-Vermont, certain affiliates thereof, and FairPoint Communications, Inc., for approval of an asset transfer, acquisition of control by merger and associated transactions*, Order of 2/15/08. Consequently, FairPoint now stands in the shoes of Verizon-Vermont for all practical and legal purposes relevant to the process of certifying support for rural and non-rural high-cost carriers pursuant to 47 C.F.R. Sections 54.313-314 and the rate comparability review pursuant to 47 C.F.R. Section 54.316.

[2] FairPoint was ordered to substitute itself for Verizon-Vermont in all proceedings before the Board except in one instance that is not relevant to the subject matter of the certification that is the subject of this letter. See Docket 7270, Order of 2/15/08 at 41.

residential and business customer will receive a monthly bill-credit titled "Federal Universal Service High Cost Fund Credit." The credit amounts will be set to fully distribute the expected additional federal support to be received by FairPoint in the coming year. As the end of the year approaches, if the projected support amount does not equal the initial estimate, a final adjustment will be made to the credit amounts. Currently the residential monthly credit is $1.27 per line and the business credit is $3.09 per line.

All federal support given to the remaining carriers (#2 through #10) will be available as revenue to the receiving companies. The Board requires all of these companies to periodically file information pertaining to their receipt of federal support, as well as other information that indicates how the federal funds are used.

II. Rate Comparability

47 C.F.R. Section 54.316 requires the Board to annually review residential rates in rural areas of the state served by FairPoint, and to certify to the Federal Communications Commission whether such rates are reasonably comparable to urban rates nationwide. For the rate comparability certification, the Board is allowed to presume that the residential rates in "rural areas" served by FairPoint are reasonably comparable to the nationwide benchmark urban rate, if such Vermont rural rates are below $36.52 per month.

The Board last collected specific rate data for "rural areas of the state" served then by Verizon-Vermont, the only nonrural carrier in Vermont in 2005. The Remand Order defined "rural area" as "any non-metropolitan county or county- equivalent, as identified by the Office of Management and Budget." Para. 83. This definition remains irrelevant because FairPoint – like its predecessor Verizon-Vermont – charges the same rates in all parts of Vermont. Therefore, rate data collected for the state as a whole are exactly equal to the rates in our "rural areas" as defined in the rule. The rates charged by Verizon in 2005 have not changed materially since then, notwithstanding Fairpoint's purchase in 2008 of Verizon's landline business in Vermont.

The FCC rule does not explain in detail how rates are to be measured. This is an essential question because FairPoint imposes Local Measured Service (LMS) charges. In February of 2004, the Vermont Public Service Board filed comments in response to a Further Notice of Proposed Rulemaking (FCC No. 03-249). Those comments stated that:

> If the Commission goes forward with its new concept of rates-based support, rate data must be valid and reliable. This requires the Commission to collect additional data, beyond nominal rates, that affect the burden of paying for local exchange service as well as the value of that service. Oversimplified rate information can underestimate the real burden on consumers and can create

> perverse incentives for states and carriers. If the Commission does not solve the methodological problems described below, nationwide rate data would be at best highly random and at worst misleading and arbitrary. . . . to develop valid and reliable local rate data it should make five adjustments: usage-sensitive charges; local calling area size; customer option plans; local/toll balance; and business/residential balance. Vermont PSB Comments of 1/14/04 at 3-4.

The Board's comments showed that an adjustment for usage-sensitive charges is important because the Commission's standard measurement technique, which is based upon 500 minutes of local calling, may underestimate actual usage. However, the Commission has not taken any further conclusive action on that Further Notice of Proposed Rulemaking and has not explained how Vermont should measure local rates when they include LMS charges. Therefore the Board must determine how best to evaluate local measured service charges for the purposes of determining nationwide rate comparability.

The Board has found that measuring local rates is a difficult task requiring substantial judgment. The greatest problem remains that of how to measure the effects of LMS charges. When the Board evaluated customer payments in 2005, it found that local service charges varied from a minimum of $20.74 per month for customers who were not on Lifeline but who had minimum usage, to a maximum of $47.89 per month for customers who used a large number of local service minutes.

The Board has not found any simple method for producing a weighted average of LMS charges. The Board made a special effort in 2005 and collected data from Verizon-Vermont concerning the rates paid by residential customers who did not subscribe to fixed calling plans. That data collection was subsequently found to have two methodological problems that prevented its use.

First, the Verizon-Vermont data excluded customers who opted to take calling packages such as the "Freedom Package." At the time of the Board's inquiry in 2005, this package sold for $49.95 per month, and it included unlimited local calling, intra-state toll and inter-state toll calling. According to Verizon-Vermont at the time, 31 percent of the primary residential lines served by Verizon-Vermont subscribed to either the Freedom Package or one of several other calling packages. For these customers, Verizon did not record local usage minutes, and it was not possible to develop an allocation based on local usage. In sum, almost one-third of residential customers had opted out of rate designs that would have allowed measurement of local rates.

Moreover, the Board found that the customers who purchased packages such as the "Freedom Package" could not be assumed to be typical of the residential customer base. Because Verizon-Vermont's other customers paid a sizeable per-minute local measured service rate, those customers with high local usage had an incentive to switch to such fixed-price plans. Therefore, the Board could not exclude these calling package customers from its analysis because that would have biased the sample and would have produced an invalid estimate of average local rates.

Second, the Verizon-Vermont data included Lifeline customers, a group excluded from the FCC's *Reference Book* analysis. This made the data unreliable as an estimate of non-Lifeline rates. The Board attempted to exclude Lifeline customers from the analysis, but it cannot represent that the resulting data were or remain reliable.

The Board found that the 2005 Verizon-Vermont data was not a sufficient basis to reach a conclusion on comparability. Because of the age and infirmities of that 2005 study, the Board is now planning to update the 2005 study in a way that would more reliably measure the local rates of FairPoint Vermont customers, considering LMS charges, Lifeline enrollment, and bundled packages. This planned update to the Vermont study is further needed because the FCC does not have any data that could be used as a proxy for average local service usage. A recent examination of all of the FCC's databases failed to yield any data that could be used to support the determination of average residential monthly local usage for use in a rate-comparability analysis in place of average usage derived from Vermont-specific data.

As the Board has stated in previous rate reviews, the Board continues to believe that the Commission's published urban benchmark rate, now set at $36.52 does not comply with law. That figure is two standard deviations above the mean urban rate. Four and one-half years ago the Tenth Circuit rejected this methodology as incompatible with the Commission's statutory duties under Section 254. As the Board said in subsequent comments, a benchmark rate cannot satisfy the statute if it is higher than 125 percent of the national urban average rate.

Data in the Commission's 2008 *Reference Book* show that average urban rates are $25.62. 125 percent of that figure is $32.02. Considering all of the above factors, the Board estimates that the average Vermont residential customer pays significantly more than $32.02 per month for local service.[3] Both figures include all fixed charges (including the federal SLC), taxes and universal service charges. We have also adjusted the Vermont figures for the explicit credit given monthly to FairPoint customers as the result of federal universal service payments. Therefore, the Board concludes that the rates of FairPoint customers are not reasonably comparable to the urban rates of customers nationwide.

A state that certifies that its rates are not reasonably comparable must fully explain its rate comparability analysis and provide data supporting its certification, including but not limited to

---

[3] It may well be that the average Vermont residential customer local rate is considerably higher, but the Board is confident to a reasonable degree of certainty in its conclusion that it exceeds $32.02.

residential rate data for rural areas within the state served by non-rural ILECs. As explained above, residential rates for FairPoint are uniform throughout FairPoint's area. They therefore are the same rates that apply in any and all subsets, including "rural areas."

In addition to the cost comparability analysis set out above, Vermont's position that the rates in Vermont are not reasonably comparable to those in urban areas is supported by the FCC's own data. Specifically, in a recent order, the FCC has listed the national average urban rate as $19.57, while further registering a comparable monthly rate for Vermont of $30.85 — the highest rate in the nation.[4]

When a state certifies that the rates are not reasonably comparable, it must also explain why rates are not reasonably comparable and explain what action it intends to take to achieve rate comparability. Rates for FairPoint are not reasonably comparable because FairPoint receives insufficient federal support from the Commission. As the Board previously has argued in many filings in Docket 96-45, Verizon-Vermont rates were high because Verizon-Vermont served a rural, sparsely populated area in a challenging climate and over difficult terrain. This inevitably lead to high loop and switch costs, on average, across all Verizon-Vermont customers. These facts remain true for FairPoint as well, as it moves forward in providing service to customers formerly served by Verizon-Vermont.

Vermont does not contemplate taking any additional actions within the state to obtain reasonably comparable rates. Any such action would be pointless. As noted above, FairPoint rates already are uniform throughout its study area. Even if Vermont were to adopt a new explicit state universal service fund, the benefits would be negligible. FairPoint serves approximately 85 percent of wireline customers in the state. Therefore on an aggregate basis the added bill surcharges to fund such a new program would almost entirely offset the benefits. Costs would still be paid by the same pool of customers, and the average rate, which is too high, would not be reduced.

Vermont intends to continue to advocate for additional federal support for the customers of FairPoint. Over the last 17 years, the Board has repeatedly argued that federal support to these Vermont customers has been insufficient. The Board continues to believe that tens of thousands of Vermonters are disadvantaged, as against similarly situated customers in other states, because a majority of Vermont's rural customers happen to be served by a large company, and because federal support unfairly discriminates against such customers. The Board intends to continue to

[4] *Order on Remand and Memorandum Opinion and Order*, CC Docket No. 96-45, April 16, 2010 at Appendix C. It further bears noting that Vermont's monthly rate of $30.85 exceeds the monthly rate of $30.25 for Wyoming, which presently operates under an FCC waiver authorizing higher universal service support to make rates more comparable to the national urban rate. *Id.* at Appendix C, p. 16.

argue to the Commission, the courts and to Congress that the majority of Vermont's customers need additional federal support under 47 U.S.C. § 254 in order to achieve comparable rates.

Sincerely,

James Volz
Chairman

cc: James Porter III, Esq. (Director for Telecommunications, Vt. DPS)
Sandra Wennerstrand (FairPoint Communications, Inc.)
Fran Stocker (Vermont Telephone Company)
Mark W. DePerrior (Topsham)
Kimberley Gates Maynard (Franklin)
Roger Nishi (Waitsfield)
Donald S. Arnold III (Shoreham)
Amber Gaudreau (TDS)
Patrick L. Morse (Northland (FairPoint))
Paul Phillips, Esq.
Lawrence Lackey (National Mobil Communications Corp.)